

Congress of the United States
Washington, DC 20515

November 21, 2019

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

The Honorable Randal Quarles
Vice Chairman for Supervision
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Dear Chairman Powell and Vice Chairman Quarles,

We write to you with respect to legal determinations issued by the Government Accountability Office (GAO) on October 22, 2019, regarding the three Supervision and Regulation Letters (SR Letters) issued by the Federal Reserve Board (Board) titled “Supervisory Guidance on Model Risk Management” (SR 11-7), “Consolidated Supervision Framework for Large Financial Institutions” (SR 12-17), and “Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies” (SR 14-8).

As you know, the GAO has determined that these SR Letters meet the applicable definition of a rule under the Congressional Review Act (CRA), which, as the GAO notes, is the same definition of a rule under the Administrative Procedure Act (APA). That determination is significant because under the clear statutory language of the CRA,¹ these SR letters must “be submitted to both Houses of Congress and to the Comptroller General before they can take effect.”²

Given that, we are writing to confirm that the Board is not in any way applying the SR Letters as if they were a rule or otherwise in effect. For example, because the SR Letters are not yet effective, we would like to confirm that the Board is not issuing Matters Requiring Attention (MRAs) or Matters Requiring Immediate Attention (MRIAs) on the basis of a bank’s noncompliance with the SR Letters. Additionally, we would like to confirm that the Board is rescinding any MRAs or MRIAs that rely on the SR Letters and is not making any examiner criticism or other supervisory determination based in whole or in part on noncompliance with the SR Letters.

SR 12-17 established the Large Institution Supervision Coordinating Committee (LISCC),³ which is the framework for consolidated, enhanced supervision of the largest, most systemically important financial institutions in the United States. LISCC designation subjects firms to heightened regulatory and supervisory requirements relating to capital adequacy and capital

¹ 5 U.S.C. § 801(a)(1).

² <https://www.gao.gov/assets/710/702205.pdf>, <https://www.gao.gov/assets/710/702190.pdf>

³ <https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm>

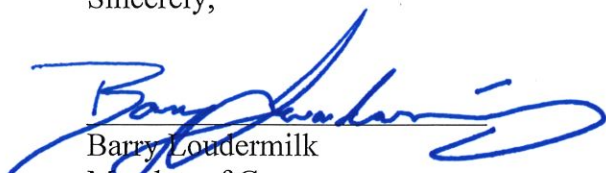
planning,⁴ liquidity sufficiency, corporate governance, recovery and resolution, model risk management, and other areas as determined at the discretion of the LISCC. Designated firms have faced the serious consequences⁵ of these stringent requirements for years. However, the Board never promulgated these requirements through formal rulemakings subject to notice, comment, and economic analysis even though they meet the APA definition of a rule.


The GAO determination also underscores our longstanding concerns regarding the lack of transparency and accountability of the LISCC designation process and the clear and urgent need for the Board to reform its process to conform to the APA and to meet the Board's stated goal of promoting transparency in its regulation and supervision of financial institutions. As the U.S. Chamber of Commerce noted in its February 2019 letter to Chairman Powell, the Board has provided scant information regarding its process and criteria for placing firms into the LISCC portfolio and subjecting them to more stringent standards. It only indicates that it considers some very broad factors and that it "may" adjust the list of LISCC firms upon review.⁶ Accordingly, the Board has made LISCC determinations on the basis of discretionary judgment, rather than clear and objective criteria. This ad hoc process has deprived firms of due process and has given them no recourse for appealing LISCC decisions. Moreover, the process for scoping firms into LISCC conflicts with the spirit and letter of the Board's recent final rule on tailoring of prudential standards, which uses clear and well-defined risk indicators for determining the tailoring regulatory requirements to be imposed on firms.

In sum, with the GAO's determinations that these letters are indeed rules under the CRA and the APA, we would like to better understand the Board's plans for addressing the problems associated with these SR Letters and the entire LISCC process and structure. Please provide a response and preliminary plan outlining steps the Board will take to address this matter as soon as possible.

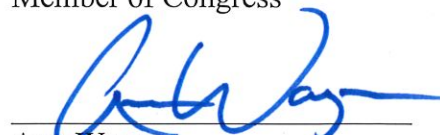
Thank you for your attention to this matter.

Sincerely,


Barry Loudermilk
Member of Congress


Andy Barr
Member of Congress


Blaine Luetkemeyer
Member of Congress


Ann Wagner
Member of Congress

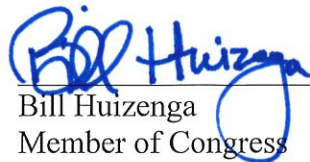
⁴ SR Letter 15-18. The GAO is still advising on whether SR Letter 15-18, which itself consolidates other SR letters (including SR 11-7 and SR 12-17), is a rule for purposes of the CRA.

⁵ e.g., downgraded supervisory ratings, objections to capital plans, forced technology investments, and limitations on provisions of credit or other services provided to customers

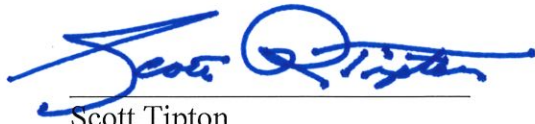
⁶ <https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm>



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Scott Tipton
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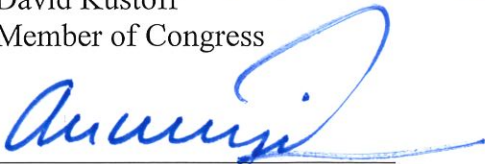
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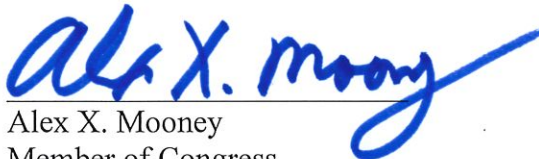
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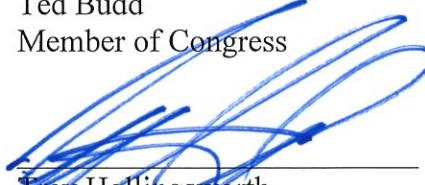
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